IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

IN RE: G.K. and J.K.	:	APPEAL NO. C-140149 TRIAL NO. F09-2083x
	:	*JUDGMENT ENTRY.*

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

This is a father's appeal from the trial court's judgment terminating father's parental rights and granting permanent custody of G.K. and J.K. to the Hamilton County Department of Job and Family Services ("HCJFS"). For the following reasons, we affirm.

G.K., born February 20, 2012, and J.K., born February 25, 2013, had been in the interim custody of HJCFS since February 22, 2012, and February 27, 2013, respectively. Both children had been adjudicated "dependent." Following adjudication, HCJFS was granted permanent custody of G.K. and J.K. as an initial disposition. Father and mother both objected. The trial court conducted a hearing on the parties' objections, reviewed the magistrate's proceedings, and subsequently adopted the magistrate's decision as the trial court's judgment. Father now appeals. Mother has not.

In one assignment of error, father contends that the trial court abused its discretion when it adopted the magistrate's decision because (1) the court failed to properly analyze all of the relevant statutory factors, and (2) the court failed to find that this case involved an "extreme situation" where reunification was not possible.

We do not review the trial court's judgment for an abuse-of-discretion, as suggested by father. Instead, this court examines the record to determine if the trial court's judgment is supported by competent, credible evidence that satisfies the "clear-and-convincing" standard. *In re W.W.*, 1st Dist. Hamilton Nos. C-110363 and C-110402, 2011-Ohio-4912, ¶ 46. "Clear and convincing evidence" is evidence that supports "a firm belief or conviction as to the facts sought to be established." *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three of the syllabus.

In this case, the trial court awarded permanent custody of G.K. and J.K. to HCJFS under R.C. 2151.353(A)(4). In pertinent part, that code section provides that a trial court must find under R.C. 2151.414(E) that a child "cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent," and also must determine under R.C. 2151.414(D)(1) that permanent commitment is in the best interest of the child.

R.C. 2151.414(E) Factors

As to the first prong of the R.C. 2151.353(A)(4) test, the trial court found that the factors listed in R.C. 2151.414(E)(1),(2),(4), and (16) existed. Citing *In re Destiny C. and Alexia D.*, 6th Dist. Lucas No. L-08-1177, 2008-Ohio-5292, father claims that R.C. 2151.414(E)(1) is inapplicable to this case because the court awarded custody to HCJFS as an initial disposition under R.C. 2151.353(A)(4). Assuming father is correct, the trial court had only to determine that one R.C. 2151.414(E) factor existed to support its finding that G.K. and J.K. could not or should not be returned to either parent. R.C. 2151.414(E); *In re E.S.*, 1st Dist. Hamilton Nos. C-100725 and C-100747, 2011-Ohio-586, ¶ 6. Because the record

supports the trial court's findings under R.C. 2151.414(E)(4) and (16), father's R.C. 2151.414(E)(1) argument is moot.

R.C. 2151.414(E)(4) states "[t]he parent has demonstrated a lack of commitment toward the child by failing to regularly support, visit, or communicate with the child when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for the child." In this case, father repeatedly missed scheduled visits with his children, sometimes fell asleep during visits, and wanted to visit the children only when mother was available to visit with him. Father was originally scheduled for two weekly visits with his children, but visitation was changed to one weekly visit due to lack of attendance. This was sufficient evidence to sustain a finding under R.C. 2151.414(E)(4). *See, e.g., In re Schaefer*, 111 Ohio St.3d 498, 2006-Ohio-5513, 857 N.E.2d 532, ¶ 46.

Under R.C. 2151.414(E)(16), the trial court had the discretion to consider any other relevant factors. Here, the court found that father was unable to provide basic necessities, and unable to maintain a safe and habitable environment. This finding is supported by the record.

Between July 2012 and May 2013, father had been convicted of two counts of disorderly conduct, obstruction of official business, and two counts of public intoxication, and had been charged with a probation violation for failing to submit to a urine screen. As a result, he was frequently in jail. He was also frequently homeless. When father did secure an apartment, he was evicted after only a few months. Father's apartment manager, Chandra Derrickson, testified that, after mother and father started living at the apartment, two windows, a door

frame, and parts of the refrigerator had been broken. Derrickson stated that she observed food, clothing, dirty diapers, beer cans and dishes strewn about the apartment. She also testified that she once detected a strong smell of marijuana in the vicinity of the couple's apartment door. After Derrickson evicted mother and father, she entered the apartment and discovered food left out in a pot on the stove, cigarette ashes and butts on the floor, soiled sanitary products improperly disposed of, and a beer can full of urine. Karen Kelly, a HCJFS caseworker, testified that she visited the apartment and observed an open container of bleach that had leaked onto the floor, beer cans, dirty diapers, and overall filth. Pictures of the apartment that corroborated Derrickson's and Kelly's testimony were admitted into evidence.

Based on this record, we hold that there was competent and credible, clear and convincing evidence to support the trial court's finding under R.C. 2151.414(E)(16).

We note that the trial court erred when it adopted that part of the magistrate's decision finding under R.C. 2151.414(E)(2) that father had a chronic mental or emotional illness, or a chronic chemical dependency issue that was so severe as to make father unable to provide a permanent home for G.K. and J.K. at the present time or within the year. The only evidence put forth concerning father's mental health was that father had undergone diagnostic testing, but that he had not engaged in recommended therapy. And while father had criminal convictions related to possible alcohol or drug abuse, nothing in the record tied these convictions to a chronic substance abuse problem so severe that father would be unable to parent G.K. and J.K. But since the record supports the trial

court's findings under R.C. 2151.414(E)(4) and (16), we hold that this was harmless error.

R.C. 2151.414(D)(1)

As to the second prong of the R.C. 2151.353(A)(4) test, the trial court was required under R.C. 2151.414(D)(1) to consider "all relevant factors" as well as those specifically listed in R.C. 2151.414(D)(1)(a)-(e) in determining whether it was in G.K.'s and J.K's best interests to be permanently committed to the custody of HCJFS.

Father first argues that the trial court's judgment must be reversed because it appears that the trial court failed to consider R.C. 2151.414(D)(1)(e). R.C. 2151.414(D)(1)(e) requires the trial court to determine whether any factors set forth in R.C. 2151.414(E)(7)-(11) apply in relation to the parents and child. In this case, the trial court's judgment analyzed pertinent R.C. 2151.414(E) factors. And it is evident from the record that none of the R.C. 2151.414(E)(7)-(11) factors applied. A trial court is not required to enumerate every statutory subsection under R.C. 2151.414 in its judgment, provided the record reflects that those factors were considered. *In re N.G.*, 1st Dist. Hamilton Nos. C-13684 and C-130685, 2014-Ohio-720, ¶ 12. Such is the case, here. This argument therefore has no merit.

The trial court did enumerate the remaining R.C. 2151.414(D)(1) factors in its decision. R.C. 2151.414(B)(1)(a) required the court to consider the relationship between the children and their parents, siblings, relatives, foster parents and out-of-home providers. Here, the record reflects that the parents were unable to provide basic necessities for their children and that they were sporadic with their

visits to their children. Further, the guardian ad litem ("GAL") reports stated that the children were well cared for in their foster homes.

Under R.C. 2151.414(B)(1)(b) the court was required to consider the wishes of the children as to placement. G.K. and J.K. were too young to express their wishes. But the GAL reported that it was in the children's best interests to be permanently committed to HCJFS.

The court also considered the children's custodial history under R.C. 2151.414(B)(1)(c), and the children's need for a legally secure placement under R.C. 2151.414(B)(1)(d). In this case, the children had not been in their parents' custody since shortly after each had been born. And the proceedings were replete with evidence that father was unable to adequately care for his children.

Therefore, based on the record before us, we hold that the trial court's analysis under R.C. 2151.414(D) was supported by competent, credible evidence that met the clear and convincing standard.

No Further Action was Necessary

Father next appears to contend that the trial court was required to undertake an analysis beyond that required by statute before awarding HCJFS permanent custody of G.K and J.K. The Ohio Supreme Court rejected a similar argument in *Schaefer*, 111 Ohio St.3d 498, 2006-Ohio-5513, 857 N.E.2d 532, at ¶ 63-65. We therefore hold that this argument has no merit.

In sum, because the trial court's findings under the required statutory factors were supported by competent, credible evidence that met the clear and convincing standard, we overrule Father's sole assignment of error.

The trial court's judgment is affirmed.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., FISCHER and **DEWINE, JJ.**

To the clerk:

Enter upon the journal of the court on June 18, 2014

per order of the court _____.
Presiding Judge